Supreme Court of the United States.

No. 82.—October Term, 1901.

Otto Groeck et al., Appellants, vs. The Southern Pacific Railroad Company. } Appeal from the Circuit Court of Appeals for the Ninth Circuit.

[January 13, 1902.]

This was a bill in equity filed in the Circuit Court for the Southern District of California by the Southern Pacific Railroad Company, plaintiff, against Otto Groeck and another, defendants, to obtain a decree declaring the company to be the rightful owner of the south half of a certain quarter section of land in Kings County, California, and that defendants hold the legal title thereto in trust for it, a conveyance of which was prayed.

The amended bill, as abstracted by the Circuit Court of Appeals, (87 Fed. Rep. 970,) alleged: "That the appellant accepted the terms of the grant, fixed the general route of its road as contemplated by the act, and on January 3, 1867, filed a map thereof in the office of the Commissioner of the General Land Office; that on that date the Commissioner accepted and approved the map and the route designated by it, and on March 22, 1867, under the direction of the Secretary of the Interior, he withdrew the odd sections of land lying within thirty miles of the line of road from sale or location, pre-emption or homestead entry; that on November 2, 1869, the Secretary of the Interior made an order declaring the withdrawal revoked; that on December 15, 1869, the Secretary suspended his order of November 2; that on July 26, 1870, the Secretary restored the withdrawal of March 22, 1867; that on August 15, 1887, the Secretary declared the withdrawal of March 22, 1867, revoked, as to the indemnity sections thereof; that the appellant commenced to build its road during the year 1870, and completed the construction in different sections between that date and the year 1889—the last section, extend-

ing from Huron westerly to Alcalde, having been constructed during the year 1888; that the land in suit is opposite to and coterminous with that section, and is within the indemnity limits of the grant, and is not included in any exception therefrom; that on September 2, 1885, the appellee Groeck settled on the land in controversy, and during the same month filed his pre-emption claim therefor in the proper land office of the United States, and thereafter complied with the land office regulations, and on June 7, 1886, made pre-emption proof and payment for the land; that on April 11, 1890, patent was issued from the United States, conveying the land to him; that, as the appellant's road was constructed in several sections, such sections were examined by commissioners appointed by the President, as provided by section 4 of the act, and that said commissioners reported that such sections had been completed as required by the act, and thereupon the President accepted and approved the reports; that a map of the definite location of such section between Huron and Alcalde was filed with and approved by the Secretary of the Interior on April 2, 1889, and the President accepted and approved the commissioners' report on that section on November 8, 1889; that on July 13, 1891, the appellant, acting under the direction of the Secretary of the Interior, selected the land in suit as granted to it by the act."

To this bill defendants interposed a plea setting up the various steps by which the defendant Groeck obtained the patent of the land as a qualified pre-emptor, and thereby, as alleged, obtained a legal and perfect title in fee simple; and further setting up the defense of laches to the claim of the railroad company.

The Circuit Court entered an order sustaining the plea upon the ground of laches, with leave to the company to reply to the plea and take issue as to the matters of fact therein alleged. (74 Fed. Rep. 585.) The company having declined to avail itself of this privilege, the Circuit Court ordered the bill to be dismissed. Whereupon the railroad company appealed to the Circuit Court of Appeals, which reversed the decree of the Circuit Court and remanded the case for further proceedings. (87 Fed. Rep. 970.) The case coming on again for hearing a decree was rendered for the plaintiff; another appeal taken to the Court of Appeals, and the decree of the Circuit Court affirmed.

Mr. Justice BROWN delivered the opinion of the Court.

This case resembles the one just decided in all its essential particulars and is controlled by it.

The decrees of both courts are therefore reversed and the case remanded to the Circuit Court for the Southern District of California with directions to dismiss the bill.

True copy.

Test:

Clerk Supreme Court, U. S.